IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7029 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI DAHYABHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKESH D RAVAL for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. Mukesh D. Raval for the petitioner and learned A.G.P. Mr. A.J.Desai, for the respondents nos.1, 2 and 3.

Leave granted to the petitioner to place on record the copy of representation dated 31-8-1999 and reply given by the respondent no.1 dated 4-10-1999.

1. The detention order dated 4-6-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. That the grounds of detention served and supplied to the detenu copy of which is produced on record at Annexure "C" at page 17 inter alia indicate that a prohibition case vide CR no.5059/99 was registered against the petitioner on 5-4-1999 at Dani Limda Police Station. That Indianmade foreign liquor was seized from the possession of the petitioner and the matter was pending for investigation.
2.1 The grounds of detention further indicate that two witnesses on assurance of their anonymity have given statements dated 2-6-1999 and 4-6-1999 respectively wherein alleged incidents dated 12-5-1999 and 20-5-1999 are narrated.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity, detention order under PASA is necessary, and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the representation dated 31-8-1999, copy of which is produced at running page 29 was sent by the petitioner to the Chief Minister and has demanded various documents, particularly, the statement of witnesses considered while passing the detention order against one Kunj Bihari alias Kishan Bachhubhai Parmar alleged to be accomplice of the petitioner who was detained vide detention order no.127/99 dated 12-4-1999 which was referred to and relied on in the grounds of detention while passing the impugned order against the petitioner. Apart from that, the petitioner has also claimed the copy of order of High Court in respect to said order of detention passed against Kunj Bihari alias Kishan Bacchubhai Parmar. The petitioner has also

claimed copy of the report of chemical analyzer and copies of the statement of witnesses. That vide reply dated 4-10-1999, the detaining authority has intimated the detenu that all documents relied on while passing the detention order against the petitioner were supplied to him and that there is no question of supplying report of chemical analyzer as in a prohibition case where Indianmade foreign liquor is seized, the material is not being sent to FSL for analysis. It is also stated in the reply that the accomplice of the detenu who was also detained, his detention order having been confirmed by the Government on advice of Advisory Board nothing is required to be done in respect to said representation.

5. Mr. Raval has submitted that the detaining authority has filed affidavit-in-reply dated 20th November, 1999 which is taken on record vide pages 19 to 28. That the contention raised by the petitioner vide paragraph 12 has been replied to by the detaining authority vide paragraph 8 of the affidavit which is devoid of any explanation as to why the documents demanded by the detenu through representation dated 31-8-1999 have not been supplied to the detenu.

6. Learned A.G.P Mr.A.J. Desai on instructions and referring to the original file stated at the Bar that documents have not been supplied as per noting made in the file.

7. On scrutiny of papers, it is clear that the petitioner-detenu has claimed material from the respondents to make effective representation and the respondents have failed to supply the same, and thereby ,have violated the constitutional mandate under Article 22(5). In view of the same, the continued detention of the petitioner is rendered illegal and invalid.

8. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 4-6-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad City is hereby quashed and set aside. The petitioner-detenu-Manubhai Dahyabhai Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

(A.K.Trivedi,J.)

stanley-akt.